Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associate with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	**CC Docket No. 98-171**
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	**CC Docket No. 90-571**
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	**CC Docket No. 92-237** **NSD File No. L-00-72**
	)	
Number Resource Optimization	)	**CC Docket No. 99-200**
	)	
Telephone Number Portability	)	**CC Docket No. 95-116**
	)	
Truth-in-Billing and Billing Format	)	**CC Docket No. 98-170**

To: To the Commission

COMMENTS

WebLink Wireless, Inc. ("WebLink"), by its attorneys, hereby submits its Comments pursuant to the Second Further Notice of Proposed Rulemaking, released on December 13, 2002 as modified by DA 03-203 dated January 24, 2003 in the above-captioned proceeding, in connection with the reform of the revenue-based contribution mechanism of the Universal Service Fee ("USF") program. [1]

In support, the following is respectfully shown.

I. INTRODUCTION

WebLink is a nationwide narrowband wireless messaging carrier located in Dallas, Texas. It is a leader in the wireless data industry, providing wireless email, wireless messaging, information on demand and traditional paging services through-out the United States. Because WebLink is a contributor to the USF and it will be affected by any modification to the methodology, it is a party in interest.

Although WebLink has agreed in the past that the present revenue-based system needed some modification and/or the addition of more participants to increase USF funding, WebLink urges the Commission not to abandon the existing revenue-based contribution system. Indeed, WebLink commends the FCC for taking the correct approach in the Report and Order associated with this Second FNPRM by modifying but preserving the revenue-based system

II. BACKGROUND

In the Second FNPRM, the Commission asked for Comments on whether to retain a revenue-based system and, alternatively, on three connection-based proposals in the record.

The first proposal, similar to the Coalition for Sustainable Universal Service ("CoSUS") plan, offered a methodology that would impose a minimum contribution obligation on all

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[1] Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing Format, CC Docket Nos. 96-45, 98-171,

interstate telecommunications carriers and a flat charge for each end-user connection depending on the nature or capacity of the connection. Residential, single-line business, mobile wireless, payphone, and paging connections would be assessed a flat monthly fee. One-way and two-way paging connections would be assessed $0.10 and $0.20, respectively.

The second proposal, based on a SBC/BellSouth plan, would assess all connections based on capacity. In this proposal, the contribution obligation for each end-user connection would be shared between access and transport providers. If the local exchange carrier ("LEC") does not provide interexchange service, it would be assessed only one unit. If the LEC provides both local and interexchange service, it would be assessed two units, one for switched access and one for interstate transport. This would also apply to interexchange carriers ("IXCs") and commercial mobile radio service providers ("CMRS"). One way pagers would be treated as one-half of an access connection and two-way pagers would be deemed to be one access connection.

The third proposal, based on an AT&T/Ad Hoc Telecommunications Users Committee plan, would assess providers of switched connections based on their working telephone numbers. In this proposal, the FCC sought comment on whether to assess telephone numbers associated with pagers at a lower level.

III. DISCUSSION

WebLink commends the Commission on its action in modifying the revenue-based contribution methodology in an effort to provide equity in a changing telecommunications environment. WebLink supports the effort to refine the present contribution methodology. However, it is opposed to a hasty decision to replace the system with one of three sketchy and incomplete proposals that have been offered by parties who are not unbiased as to result.

90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("Second FNPRM").

Further, WebLink and many previous commenters in this proceeding expressed concerns about the fairness of the proposals and the viability of a connection-based USF system.

A. The Connection-Based Proposals Raise Significant Issues

1. The Proposed Connection-Based Mechanisms Violate Section 254(d)

Section 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. §254(d), requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." While the revenue-based methodology satisfies each element of the requirement, a connection-based assessment violates Section 254(d) because such an assessment is not competitively neutral since it is based on units of measurement that are unequal. An example of this inequality is the bundling of several revenue-enhancing elements -- for example, local calling, long distance and internet access -- into one connection by some providers while paging carriers only provide one element in their connection. Other disparities in a connection-based mechanism include the differences in revenues generated by different types of carriers and services - for example, voice calls versus paging calls; and the amount of time consumed on the public switched telephone network ("PSTN") by the connection, which would provide more benefits to the voice service providers. Thus, even though there appears to be an effort to move away from a revenue-based assessment, it must be considered in the methodology, since that factor is important in the equation to determine what is equitable.

The per-connection proposal is particularly discriminatory to the paging carrier. The Commission states that, "An analysis of the record reveals interest in a connection-based methodology that would assess carriers based on their provision of connectivity to interstate networks, regardless of how many minutes of use or revenues are derived from a connection."[2] However, to disregard those factors -- minutes of use and revenues -- would have an immense discriminatory impact on paging. Paging carriers' average revenue per unit is approximately $8.00 a month for one-way paging,[3] which constitutes about 90 percent of paging revenue,[4] while the average bill for a landline connection is $47.37.[5] Further, transmission of a 90-character paging message generally takes only 300 milliseconds of airtime on a one-way page and only 152 milliseconds of airtime on a two-way paging network, according to industry information.[6] This means that the average paging connection to the PSTN is 15 seconds [7] versus the unlimited PSTN air time consumed by a voice call. It is clear that to consider only connectivity to the network without factoring in minutes of use and revenue would be exceptionally discriminatory toward paging carriers.

Under the first proposal, the cost per pager would rise from $0.07 to $0.10 for one-way and to $0.20 for two-way paging. With the current state of the paging industry,[8] any increase in USF cost would cut into the paging carrier's limited margin; affect its competitiveness; and worse, could force further customer migration and ultimately, eliminate paging as a option.

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2 Supra at ¶4.

3 Comments of Metrocall Holdings, Inc. at 9.

4 *In re Implementation of Section 6006(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competition Market Conditions With Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 13049 n444 (2002)("Seventh Report") .

5 Supra at 13097.

6 See Ex Parte Communication - Arch Wireless Operating Company, Inc.("Arch"), September 19, 2002 ("Ex Parte Communications") at 3.

7 Supra

Thus, there could be a real possibility that consumers would lose a low cost telecommunications choice. In addition, imposing increases on paging carriers would "skew the marketplace." It was this effect of conveying commercial advantages or disadvantages in the marketplace that the Commission sought to avoid when it established the USF program.[9] In addition, based on the above discussion concerning the amount of airtime consumed by two-way paging -- 152 milliseconds of airtime -- it is inequitable to place the USF charge for it at $0.20. Any increase of contributions at this time would be inequitable.

Under the second proposal, one-way paging would be counted as half of a connection and two-way paging would be counted as a full connection. Given the discussion on paging airtime above, it is not hard to see that this formula is discriminatory to paging carriers. Even though it is uncertain from the proposal what the connection rate would be, it is clear that the time spent on the PSTN by a two-way pager would not equate to a connection to the network by a voice call. As suggested by Arch, if the Commission does proceed with a connection-based mechanism, it should establish a capacity-based assessment for paging carriers based on the capacity provided by other CMRS providers. Based on such an assessment, one-way paging units would be charged at one-twentieth of the amount established for a CMRS voice connection; and two-way paging units would be charged at one-tenth of the level of a CMRS voice connection.[10]

With regard to the third connection-based proposal, it is not certain what the rate would be for the telephone number. But it still would be discriminatory to paging providers for the same reasons discussed above: length of connectivity to the PSTN and disparities in revenue

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8 Seventh Report at 13049-13050.

9 Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶48 (1997) ("Universal Service Order").

from the use of the number. These two factors must be taken into consideration if such an approach is seriously considered by the Commission. Accordingly, WebLink responds to the request for comments on whether to assess telephone numbers associated with pagers at a lower level by offering the same assessment formula described in the second proposal above: one-way paging units would be charged at one-twentieth of the amount established for a CMRS voice connection telephone number; and two-way paging units would be charged at one-tenth of the level of a CMRS voice connection telephone number. Further, if this proposal should become the USF mechanism, it must be made clear that the FCC intends that the numbers assessed are working numbers used by subscribers rather than the entire blocks of numbers assigned to carriers.

Finally, as the Commission is aware, there is an overriding inequity to paging carriers in that these carriers are not eligible to draw from the USF to provide service. This circumstance highlights the inequitable and discriminatory character of any increased USF assessment on paging carriers.

2. The Proposed Shift to Another Mechanism Has No Advantages

As is evident from the FNPRM, the amount of time and resources to establish procedures for determining the calculations and to monitor the number of reported "connections" per carrier will be huge. At this point, the proposals are so sketchy that it is difficult to envision how they would work to insure compliance.

In addition, a new methodology would require a significant change in reporting format that will cause additional Commission -- and carrier -- administrative burdens. Any change in the telecommunications markets, such as increased connections or shifts in connections among carrier type could require complex recalibrations and additional proceedings to implement.

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[10] Ex Parte Communication at 3.

However, there is nothing in the record that offers proof that the system needs to be replaced in its entirety.

In sum, there does not seem to be any practical or legal rationale to discard the revenue-based mechanism, if modifications can be made to accommodate changing circumstances. A revenue-based approach is logical; equitable; and relatively easy to track, with the safe harbor calculations. A change-over would raise legal issues, possible challenges and litigation, increase administrative burdens and require a strong compliance program.

B. The Commission Should Evaluate the Interim Plan Prior to Any Major Change.

Initially, the FCC asked commenters to discuss whether the changes were sufficient to ensure long-term viability of the USF.[11] WebLink submits that it may be too soon to evaluate how the changes have affected the viability of the USF. The Ad Hoc Telecommunications Users Committee, AT&T Corp., e-commerce & Telecommunications Users Group ("eTUG"), Level 3 Communications, LLC and WorldCom, Inc. estimate that April 1, 2003 would show the full effect of the modifications.[12] It is not clear that a full evaluation can be made even then.

Certainly, however, the modification to a projected-revenue contribution should ameliorate the complaints related to an historical-revenue contribution, particularly in an evolving telecommunications market. Paging in particular continues to experience a decline in one-way paging revenues and increased competition from other mobile data providers for advanced mobile data services.[13] Additionally, the safe harbor increase for mobile wireless providers from 15 to 28.5 percent reflects the higher usage of these services.[14] Accordingly,

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11 Second FNPRM at ¶67.

12 Motion For Extension of Time, filed January 17, 2003.

13 Sixth Report at 13049-13050

both adjustments appear to be equitable and non-discriminatory to all parties, pursuant to 47 U.S.C. §254(d).

WebLink submits that the revenue-based system already in place should remain in effect because the (i) Commission and the carriers already have adapted to the system; (ii) administrative procedures are established; and (iii) accounting systems have already been put in place. Further modifications and/or additional contributors may be required; however, a revenue-based system can be adjusted to accommodate such changes, as shown by the Report and Order in this proceeding.

The Commission also asked whether paging carriers are able to determine their actual interstate end-users telecommunications revenues. WebLink cannot determine these interstate revenues because its numbers could be used anywhere in the United States and there is no way to track where the end-user is located. It is therefore not possible to determine if paging calls are interstate.

The Commission further asked whether the safe harbor for paging should remain in effect. Because paging carriers cannot determine if their calls are intrastate or interstate, it is necessary to retain the safe harbor for paging. However, because the present safe harbor percentage was based on actual paging carrier data and since paging carriers do not offer long distance services, do not bundle their service with any other offerings and have not seen interstate paging revenues rise, this safe harbor percentage should not change.[15] Accordingly, WebLink respectfully requests that the Commission retain the safe harbor for its operations.

In summary, WebLink submits that a connection-based USF mechanism is inconsistent with 47 U.S.C. §254(d). Practically, it would be more efficient for the Commission, and for the

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[14] Section FNPRM at ¶15.

USF contributors, to revise the revenue-based system rather than completely replace it with an untried, potentially discriminatory and sketchy proposal. The Commission should evaluate the modified revenue-based system and, if necessary, make additional changes to streamline it.

IV. CONCLUSION

WHEREFORE, the foregoing having been duly considered, WebLink Wireless, Inc. respectfully submits that the Commission should not adopt a per-connection assessment mechanism.

Respectfully submitted,

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Dated: February 28, 2003

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15 See Arch Wireless, Inc. Comments dated April 22, 2002 at 10.